SUPREME COURT, U.S.

FILED
SEP 10 1974
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Term, 197

No. 74-257

ROBERT PYNE and JOHN KRASNER, *Petitioners*

v.

DOROTHY D. GREEN, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA

MacELREE, PLATT, HARVEY
& GALLAGHER, LTD.
Michael B. Kean
Attorneys for Petitioners

17 West Miner Street
West Chester, Pa. 19380

THE LEGAL INTELLIGENCER, 66 NORTH JUNIPER STREET, PHILA., PA. 19107

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The Petitioners, Robert Pyne and John Krasner pray that a writ of certiorari issue to review the final judgment of the Supreme Court of the Commonwealth of Pennsylvania rendered in these proceedings on June 10, 1974.

OPINIONS BELOW

The orders of the Supreme Court of the Commonwealth of Pennsylvania were both per curiam decisions and they appear at Appendices A & B, pp. 1a-2a. The Superior Court of the Commonwealth of Pennsylvania issued only a per curiam order affirming the judgment of the Court of Common Pleas of Delaware County, appearing at Appendix C, page 3a. The opinion of the Court of Common Pleas of Delaware County is reported at 61 Del. Co. 142 (C. P. Delaware County, Pa. 1973) and appears at Appendix D, page 4a. The order upon which the opinion of the Delaware County Court is based appears at Appendix E, page 13a.

JURISDICTION

The final order or judgment of the Supreme Court of the Commonwealth of Pennsylvania was entered on the 10th day of June, 1974. See Appendix A, page 1a. This Petition for certiorari was filed less than ninety (90) days from the date aforesaid. Jurisdiction of this Court is involved under 28 U.S.C. §1257(3).

QUESTIONS PRESENTED

1. Whether a landlord constitutionally may confess judgment in ejectment pursuant to a lease provision, without notice to the tenant and without an opportunity for the tenant to be heard on the merits of whether or not he violated the lease provisions.

2. Whether the Pennsylvania Rules of Civil Procedure, adopted by the Pennsylvania Supreme Court, authorizing and setting forth the procedure for entering a confession or judgment in ejectment are constitutional, since they do not provide for notice and an opportunity for the tenant to be heard on the merits before judgment is entered.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States, Amendment XIV, §1:

> ". . . No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the protection of the laws."

Rules of Civil Procedure of Pennsylvania, Rule 2971: Commencement of Action:

"(a) An action shall be commenced by filing with the prothonotary a complaint substantially in the form provided by Rule 2952. The complaint shall also contain a description of the property and a demand for judgment in ejectment.

(b) The plaintiff shall file with the complaint a confession of judgment substantially in the form provided by Rule 2974."

STATEMENT OF THE CASE

The petitioners are tenants and the respondent is the lessor of the premises located at West Chester Pike and Providence Road in Edgemont, Delaware County. The property was let according to the terms of a Uniform Lease No. 50 (John C. Clark Company) for the stated purpose of being used and occupied as "a novelty shop selling cards, gifts, etc. and general merchandise," said lease commencing August 15, 1972, for a term of three (3) years. The lease was prepared and tendered by the lessor.

On November 3, 1972, without prior notice to the petitioners, respondent commenced an action in ejectment by confession by filing a complaint and obtained a writ of possession which was served on petitioners on the following day. Respondent alleged as a basis for obtaining judgment in ejectment by confession that petitioners breached the terms of their lease with her and therefore judgment by confession was authorized under another term of said lease.

On November 22, 1972, petitioners filed in the Court of Common Pleas of Delaware County, petitions to open the judgment in ejectment entered by confession and to strike said judgment, and to stay execution of the writ of possession. A rule was granted upon respondent to show cause why the prayers of the petitions should not be granted and the matter was set for hearing on December 8, 1972. On that date, petitioners submitted to the court, the Honorable Robert A. Wright, J., amended petitions to open judgment, to strike judgment, and to stay execution, which amended petitions were accepted by the court, and served as the basis for said hearing.

The issues raised by the amended petitions were that the respondent has not met the procedural requirements for entering a confession of judgment in ejectment, that the procedure authorized by law is unconstitutional, that petitioners had a valid defense to the matters set forth in

the complaint, and finally that the petitioners complied with all of the terms, covenants and conditions of their lease.

Subsequent to the evidentiary hearing on December 8, 1972, Judge Wright, on February 27, 1973, issued an order dismissing petitioners' petitions, sustaining the judgment entered by respondent and permitting respondent to proceed with execution. Appendices D & E respectively.

An appeal was taken on March 28, 1973, following the entry of Judge Wright's order, to the Superior Court of Pennsylvania, and their per curiam order dated November 8, 1973, affirming said judgment is attached hereto as Appendix C.

An appeal was taken to the Supreme Court of Pennsylvania on December 6, 1973, and their order dated March 18, 1974, affirming the judgment below is attached hereto as Appendix B. A petition for reconsideration was filed by petitioners on March 26, 1974, and disposed of by the Supreme Court of Pennsylvania on the 10th day of June, 1974. Said per curiam decision is attached hereto as Exhibit A.

REASONS FOR GRANTING THE WRIT

The first threshold constitutional issue here presented is whether a landlord may constitutionally confess judgment in ejectment against a tenant for breach for lease provisions other than a failure to pay rental due. The petitioners herein admittedly paid rent each month when due, and the basis for entering the judgment by confession was apparently on the fact that the landlord objected to the type of business being carried on by the tenants in the leased premises. Although there are many cases on the issue of the constitutionality of confessed judgments for money debts, [*e.g. D. H. Overmyer Co. v. Frick Co.*, 405 U.S. 174 (1972); *Swarb v. Lennox*, 314 F.Supp. 109 (E.D. Pa. 1970), *affd.* 405 U.S. 191 (1972); *Fuentes v. Shevin*, 407 U.S. 67 (1972)], there appear to be none on the raised issue herein. Confession of judgment for failure to pay money is a relatively easy issue—the debtor either did or did not pay the amount due. However, here, the tenants had no way of knowing whether they breached the lease because the basis of said alleged breach was that they offended the sensibilities of the landlord.

In *Swarb v. Lennox*, *supra*, this Court affirmed the judgment of the Eastern District Court of Pennsylvania, holding that confessions of judgment for money were unconstitutional with respect to individuals earning less than $10,000.00 per year. In *D. H. Overmyer Co. v. Frick Co.*, *supra*, this Court held that confession of judgment for money clauses were not unconstitutional per se. In that case, of course, the parties were two corporations who had negotiated a contract containing the confession clause.

The respondent has and will place great reliance on the *Overmyer* case, as did the Court of Common Pleas of Delaware County, see Appendix D, but it is submitted that that reliance is misplaced here. The case of *Fuentes v. Shevin*, *supra*, decided by this Court, shows the distinction to be drawn from the *Overmyer* holding in certain cases.

That case held that there must be an awareness of the *significance* of the waiver by the tenant of the rights of notice and hearing before the due process clause of the 14th Amendment has been satisfied.

In this case, even assuming that the petitioners knew of the "money" portion of the confession clause, how could they know when the landlord would decide to evict them on some other basis, which they had no way of knowing existed. Would anyone knowingly sign an agreement containing a provision allowing for their ejectment from the leased premises for no reason at all particularly in a business situation where they have invested substantial sums of money. The failure to pay rent is easily understood as a basis for losing certain property rights; breaching some vague provision concerning the use of the premises is not so easily discernible and could never be anticipated.

There appears to be another question here, and that is whether or not a confession of judgment in ejectment is justifiable in this kind of situation. The decision in *Overmyer, supra,* hinted that cognovit provisions do serve a useful and proper purpose in the commercial world. Creditors need financial protection so that their investment is not dissipated; they have a right to a monetary return on an investment. In other words, a landlord has the right to receive his rent each month when it is due because he suffers a financial loss if it is not paid. An installment seller has the right to receive the money due since he has already paid for the goods that he is selling to the debtor. However, has one the right to sign a lease with a tenant, and then eject him at a whim, assuming of course that the ejectment is not based on some damage to the property creating a potential financial loss for the investor landlord. It would appear that confession of judgment in ejectment clause in this particular situation is not justifiable for any purpose. The landlord loses nothing if he is unable to

enter judgment by confession, but instead must sue in assumpsit for breach of contract as other individuals must.

There appears to be no decisional law on this narrow question, and that is one of the reasons that this Court should issue a writ of certiorari directed to the Pennsylvania Supreme Court, to determine whether or not amicable actions for judgment in ejectment by confession are unconstitutional. Will the United States Constitution tolerate the deprivation of property by the ejectment of a tenant, absent notice and a prior hearing on the merits, particularly where it is not based on failure to pay rent or the potential suffering of financial loss by the landlord if he cannot enter judgment and execute on that judgment quickly?

The second threshold issue raised here, a corollary of the first, is whether or not the Pennsylvania Rules of Civil Procedure allowing confession of judgment in ejectment are unconstitutional as applied in this instance. They clearly are not unconstitutional. *Swarb v. Lennox*, *supra*. It is submitted that if this Court finds that landlords may not confess judgments against tenants to evict them on a basis other than failure to pay rent, under the Fourteenth Amendment due process clause, then statutes and rules that authorize such procedure and prescribe for its operation are likewise unconstitutional.

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of the Commonwealth of Pennsylvania.

Respectfully submitted,

MacELREE, PLATT,
HARVEY & GALLAGHER, LTD.

By:

MICHAEL B. KEAN

Appendix A

SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

SALLY MRVOS
PROTHONOTARY
LAURA E. LITCHARD
DEPUTY PROTHONOTARY

Philadelphia 19107
June 17, 1974

Terry W. Knox, Esq.
MacElree, Platt, Harvey & Gallagher
27 South High Street
West Chester, Pa. 19380

Re: Dorothy D. Green v.
Robert Pyne and John Krasner
No. 1238 Allocatur Docket

Dear Mr. Knox:

Please be advised that the Court has entered the following Order on the Petition for Reconsideration of Denial of Petition for Allowance of Appeal in the above captioned matter:

"June 10, 1974
Denied
By the Court"

Very truly yours,

LAURA E. LITCHARD
Deputy Prothonotary

LEL:ejh

cc: Donald E. Schlater, Esq.

Appendix B

SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

SALLY MRVOS
PROTHONOTARY
LAURA E. LITCHARD
DEPUTY PROTHONOTARY

Philadelphia 19107
March 20, 1974

Terry W. Knox, Esq.
MacElree, Platt, Harvey & Gallagher
27 South High Street
West Chester, Pa. 19380

Re: Dorothy D. Green v.
Robert Pyne and John Krasner, Petitioners
No. 1238 Allocatur Docket
Superior Court No. 970 October Term 1973

Dear Mr. Knox:

Please be advised that the Court has entered the following Order on the Petition for Allowance of Appeal in the above captioned matter:

"March 18, 1974
Denied
By the Court"

Very truly yours,

LAURA E. LITCHARD
Deputy Prothonotary

LEL:ejh

cc: Donald E. Schlater, Esq.

Appendix C

No. 744

IN THE
SUPERIOR COURT OF PENNSYLVANIA

DOROTHY D. GREEN — No. 970 October Term,

v.

ROBERT PYNE &
JOHN KRASNER,
Appellants — 1973

Appeal from the Order of the Court of Common Pleas, Civil Action, Law of Delaware County, at No. 11570 of 1972

PER CURIAM

FILED: November 8, 1973

Order affirmed.

Appendix D

IN THE
COURT OF COMMON PLEAS OF
DELAWARE COUNTY, PENNSYLVANIA
CIVIL ACTION — LAW

DOROTHY D. GREEN,
Plaintiff

v.

ROBERT PYNE and
JOHN KRASNER,
Defendants

No. 11570

of 1972

In Ejectment

Eugene P. Balderston, Jr., Esquire and
Donald E. Schlater, Esquire, *Attorneys for Plaintiff*

Michael B. Kean, Esquire, *Attorney for Defendants*

OPINION

WRIGHT, J. Dated: June 8, 1973

This matter involves an action In Ejectment brought by a landlord, Dorothy D. Green (hereinafter referred to as "Landlord") to eject tenants, as lessees, Robert Pyne and John Krasner (hereinafter referred to as "Tenants").

On August 1, 1972, the parties to this action entered into a lease for rental of a certain business location in Edgemont Township. The lease was for a period of three years, commencing on August 1, 1972, and ending on July 31, 1975. A Complaint in Ejectment was filed by the Landlord on November 3, 1972, alleging that the Tenants had entered into the leased premises in late August and since on or about September 15, 1972, breached certain terms, conditions and covenants of such lease. The Complaint specifically avers violations of the following lease provisions:

(1) Paragraph 2 — That the leased premises are ". . . to be used and occupied as a novelty shop selling cards, gifts, etc., and general merchandise and for no other purpose . . ."

(2) Paragraph 13(d) — This lease is granted upon the express condition that Lessee and or the occupants of the premises herein leased, shall not conduct themselves in a manner which the Lessor is his sole opinion may deem improper or objectionable, and that if at any time during the term of this lease or any extension or continuation thereof, Lessee or any occupier of the said premises shall have conducted himself, herself or themselves in a manner which Lessor in his sole opinion deems improper or objectionable, Lessee shall be taken to have broken the covenants and conditions of this lease, and Lessor will be entitled to all of the rights and remedies granted and reserved herein for the Lessee's failure to observe any of the covenants and conditions of this lease."

(3) Paragraph 8(c) — [Lessee] "Comply with any requirements of any of the constituted public authorities, and with the terms of any State or Federal statute or local ordinance or regulation applicable to Lessee or his use of the demised premises, and save Lessor harmless from penalties, fines, costs or damages resulting from failure to do so."

(4) Paragraph 9 — "Lessee covenants and agrees that he will do none of the following things without the consent in writing of Lessor first had and obtained:

* * *

(c) Place or allow to be placed any . . . sign . . . upon the . . . outside walls or pavements of

said premises, or paint, place, erect . . . any sign . . . on or in any part of the premises."

Landlord avers in her Complaint the following particulars with reference to violations of the above-quoted lease provisions:

(1) Use of the leased premises for the showing and viewing of motion pictures for the entertainment of business invitees.
(2) Use of the leased premises for the advertising, display, sale, showing and viewing of pornographic books, literature and motion pictures to business invitees.
(3) The erection of an electric sign advertising "Adult Books" on the front of the leased premises without first obtaining written permission from the landlord.
(4) The erection of a sign which says, inter alia, "X Rated Movies" and "Educational & Medical Literature of Sexual Nature" on the outside of the leased premises without first obtaining written permission from the Landlord.

Filed with the Complaint in Ejectment was a Confession of Judgment, as well as a Praecipe for Writ of Possession. An affidavit of Service was filed on November 8, 1972, indicating personal service upon both Tenants on November 4, 1972. A Petition to Strike Off Judgment was filed on November 22, 1972, by Tenants, being returnable on December 8, 1972. Attached thereto was a Petition to Open Judgment, as well as a Petition to Stay Execution. An Answer to the aforementioned Petitions was filed on behalf of the Landlord on November 30, 1972.

A hearing was held on December 8, 1972, before the writer of this Opinion. At the hearing, an Amended Petition to Strike Off Judgment, Petition to Open Judgment and Petition to Stay Execution were filed on behalf of

Tenants. An Answer to such Amended Petitions was duly filed on behalf of Landlord on January 29, 1973. On February 27, 1973, the writer of this Opinion filed an Order dismissing Tenants' various Petitions, sustaining the Judgment entered against Tenants and permitting Landlord to proceed. An Appeal to the Superior Court of the Commonwealth of Pennsylvania was filed on March 29, 1973, making this Opinion necessary.

The instant action, and the procedure governing the same, is subject to Pennsylvania Rules of Civil Procedure 2970-2976 concerning Confession of Judgment for Possession of Real Property, and, except as otherwise provided, Pennsylvania Rules of Civil Procedure 2950-2962 concerning Confession of Judgment for Money, the same becoming effective in January 1970.

A petition to strike off a judgment shall be granted when such judgment is defective on its face. Sufficient facts must be pleaded to show that the defense averred is, indeed, meritorious and can be established at trial. *Girard Trust Bank v. Remick et ux.*, 215 Pa. Superior 375 (1969); *Morgan v. L.G. Krepps & Sons, Inc.*, 197 Pa. Superior 6 (1961); *Commonwealth v. J. & A. Moeschlin, Inc.*, 314 Pa. 34 (1934).

The salient particulars averred by Tenants as a defense are as follows:

(1) That the summary conviction against Tenants in the appropriate District Justices' Court has been appealed by Tenants, and therefore such is not final, thereby being not conclusive evidence that Tenants have breached lease provisions 8(c) and 9(c).

(2) That notice of entry of judgment was defective in that the real property described by Landlord was not the property leased by Tenants.

(3) That the action for confession of judgment was not proper inasmuch as the Complaint did not comply with the Rules of Civil Procedure.

(4) That service of notice upon Tenants was improper since the affidavit of notice was not properly notarized.

(5) That the entry of judgment does not conform to the appropriate lease provisions requiring Landlord to file an affidavit of facts.

(6) That the entire procedure authorizing entry of judgment in ejectment by confession is unconstitutional and invalid.

The above averments of Tenants shall be discussed seriatum.

(1) On November 3, 1972, a summary conviction was obtained against Tenants before the District Justice of Edgemont Township for violation of a local ordinance, wherein the Tenants were found to have illegally erected and maintained an outdoor electrically-lighted sign. Tenants take the position that, since the summary conviction has been appealed to our Court, this conviction cannot form a basis for violation of lease provision 8(c). Assuming, arguendo, that Tenants' position is correct, we are not convinced that this fact should or does erase or nullify a breach of the lease provision. In lease provision 9(c), Tenants have covenanted not to place any sign, etc., without written permission from Landlord. Additionally, in lease provision 32, Tenants have covenanted to erect an attractive sign, *with prior inspection by Landlord*, insuring compliance with applicable zoning regulations. During the hearing of December 8, 1972, Tenants admitted that no permission was received from Landlord, (N.T. 42), nor was specific approval gained from Landlord, (N.T. 43). Additionally, no prior inspection was alluded to by Tenants as having been secured from Landlord. Tenants seem to suggest, in their testimony, that Landlord lives in close proximity to the subject premises, could see the sign and made no objection for a period of time, (N.T. 42-45).

These facts, we feel, do not vitiate the requirement of prior inspection and approval by Landlord.

(2) The notice of entry of judgment that was filed in Court and served on Tenants involved several pleadings and attached supporting documents. One of those documents was the lease itself, entered into by Landlord and Tenants. Obviously, the lease itself describes the subject premises. A legal description of the property was spelled out in the Complaint, and the Confession of Judgment, and the Writ of Possession. The lease refers to property situate on the corner of West Chester Pike and Providence Road, Edgemont Township. In the first two sentences of the legal description, one can sufficiently conclude that such description refers to the same property. The legal description refers to a piece of ground ". . . with the one-story building thereon . . . in the Township of Edgemont . . . on the North side of the West Chester Pike . . . of the intersection of said Pike and Providence Road . . .". It would be hard to imagine that anyone could have been misled by such a description. This was not contended by the Tenants at the hearing to have prejudiced them in any way, nor do we think they could have so contended.

(3) This Court has reviewed the pleadings that Landlord filed in initiating this action and we find that they substantially comply with the requirements of the appropriate Pennsylvania Rules of Civil Procedure. Tenants aver that Landlord has not averred *facts* to support her Complaint in Ejectment and merely terms such averments as "conclusions". With this we cannot agree. Landlord has specifically averred violations of the "use" provision of the lease (Para. 2) by allowing motion pictures to be shown to business invitees, by erecting a sign in violation of lease provisions (the same already having been referred to above), etc. The Tenants have not specifically denied these facts, and in point of fact admitted that they erected the sign, (N.T. 42), and admitted that they show movies to business invitees, (N.T. 36). Other averments of fact are

contained in the Complaint, the same being sufficiently in compliance with the appropriate Civil Rule of Procedure.

(4) The affidavit of service first filed by Landlord with this Court was not notarized. It was, however, signed by the affiant. A notarized affidavit of service (also signed by the affiant) was filed on November 30, 1972. This fact, we feel, does not rise to the level of a meritorious defense which it is the Tenants' burden to show. It is to be recognized that Pennsylvania Rule of Civil Procedure 2958 is designed to afford the Defendant, after notice, an opportunity to either strike or open a judgment. Subsection (a) of Rule 2958 provides:

> "Within twenty (20) days after the entry of judgment the plaintiff shall mail to the defendant, by ordinary mail addressed to the defendant at his last known address, written notice of the entry setting forth the date, the court, term and number and the amount of the judgment, and file with the prothonotary an affidavit of mailing of the notice. Failure to mail the notice and file the affidavit shall not affect the lien of the judgment."

Additionally, subsection (b) provides:

> "Within twenty (20) days after the entry of judgment the plaintiff may issue a writ of execution even if the notice has not yet been mailed and the affidavit of mailing has not yet been filed."

In the case before us, personal service was accomplished on Tenants on November 4, 1972. We find that Tenants were given ample opportunity to petition to open and or strike the judgment entered and they have done so, without any prejudice resultant from the first affidavit of service not having been notarized.

(5) Tenants next complain that Landlord did not comply with lease provision 18, in that an affidavit of

default was not filed in this action. Since Landlord initiated this action by Complaint, we find that this satisfies the lease requirement. As noted above, the Complaint states the facts of default alleged by Landlord against Tenants. An affidavit of default would only serve to duplicate the facts averred in the Complaint.

(6) Tenants' last argument is that the entire scheme of confession of judgment is unconstitutional and invalid. With this we do not agree and refer the reader to *D.H. Overmyer Co., Inc. of Ohio v. Frick Company*, 405 U.S. 174, 92 S.Ct. 775, 31 L.Ed.2d 124 (1972), and *Swarb v. Lennox*, 314 F.Supp. 109 (E.D. Pa. 1970), Affd. 405 U.S. 191, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972), for appropriate discussion thereon.

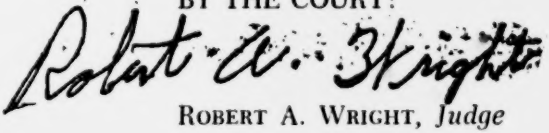
By way of additional discussion, it should be pointed out that a lessee, in accepting a lease containing a covenant restricting the *use* of the premises, cannot thereafter complain that the covenant is enforced against him. *Thomas v. Davis*, 163 Pa. Superior 6 (1948). Where the language of the lease clearly shows that no use of the premises was to be permitted other than that which is specified, it amounts to an implied condition so limiting the use. The use provision indicates that Tenants shall occupy the premises "as a novelty shop selling cards, gifts, etc., and general merchandise, and *for no other* purpose". We do not agree with Tenants that this allows them to show movies to business invitees. (This Court has not decided whether or not any of the materials available for viewing in the subject premises are or are not pornographic in nature. No testimony was taken on this issue, nor was any offered, and such a decision is not felt necessary for the purpose of this action. Neither has this Court considered the subject matter or content of any sign that Lessor alleges violated the terms of the lease.)

We find that Tenants have violated certain provisions of the subject lease. Additionally, it has not been shown that the judgment is defective on its face, nor have suffi-

cient facts been pleaded to establish a meritorious defense (See: *Girard Morgan*, and *Commonwealth v. J. & A. Moeschlin, Inc.*, supra.)

It was for the foregoing reasons that the Court entered its Order of February 27, 1973, dismissing the Lessees' Petitions and permitting the Landlord to proceed with ejectment proceedings.

BY THE COURT:



ROBERT A. WRIGHT, *Judge*

Appendix E

IN THE
COURT OF COMMON PLEAS OF
DELAWARE COUNTY, PENNSYLVANIA
CIVIL ACTION—LAW

DOROTHY D. GREEN,
Plaintiff
v.
ROBERT PYNE and
JOHN KRASNER,
Defendants

No. 11570
of 1972
In Ejectment

E. P. Balderston, Jr., Esquire, and Donald E. Schlater, Esquire, *Attorneys for Plaintiff*

Michael B. Kean, Esquire, *Attorney for Defendants*

ORDER

AND NOW, to wit, this 27th day of February, A. D., 1973, after hearing held on Defendants' Petition to Strike Off Judgment, Open Judgment and Stay Execution and upon consideration of Memorandums of Law of counsel, it appearing that Plaintiff has complied with procedures now applicable and it further appearing that Defendants have committed a breach of the lease agreement existing between the parties, it is hereby ORDERED and DECREED that:

1. Defendants' Petition be and the same is hereby dismissed.
2. The judgment entered against the Defendants in

the Prothonotary's Office in this proceeding is hereby sustained.

3. Plaintiff is permitted to proceed in this matter.

BY THE COURT:

ROBERT A. WRIGHT, *Judge*